

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4787 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SHANKAR FAGUMAL BHUTIYANI (SINDHI)

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.Nigam Shukla, learned Addl. P.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/10/96

ORAL JUDGMENT :

1. The detention order dated 15-4-96 passed by the Police Commissioner, Ahmedabad City has been challenged by the petitioner-detenu. The petitioner has been detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on the same day i.e. 15-4-96 and since then the petitioner is

under detention at Baroda Central Jail, Baroda.

2. The grounds, which were enclosed with the detention order, show that the petitioner's operational area is Kubernagar 'G' Ward where he is engaged in the business of unauthorised foreign liquor, which is imported by him alongwith his associates, the stock of such foreign liquor is maintained by them and is then sold out and thus petitioner is engaged in the anti social activities. The detaining authority has noted the pendency of a criminal case No.336/96 against the petitioner under the Bombay Prohibition Act wherein 240 bottles of foreign liquor were involved. The detaining authority has then noted that besides this business of importing and selling unauthorised foreign liquor and the petitioner's activities as a bootlegger, the petitioner was involved in 2 incidents dated 24-3-96 and 17-3-96. The detaining authority had taken into consideration the statements of the witnesses with regard to the aforesaid two dates of 24-3-96 and 17-3-96. One of the witnesses has stated with regard to the incident dated 24-3-96 that while he was passing on the road opposite Kubernagar M.G. High School the petitioner and his associates intercepted him and suspecting him to be a police informer gave him public beating, the witness cried, the petitioner brought out a sharp edged weapon (Chhari), ran after the people who had collected there, crowd become helter skelter and an atmosphere of terror was created. With regard to the incident dated 17-3-96 the petitioner and his associates went to the house of the witness alongwith stock of the unauthorised liquor and wanted the witness to store it with him. When the witness declined, the petitioner got enraged. The witness was brought to the place opposite Shan Hotel of Kubernagar and was publicly beaten. The crowd was gathered. The petitioner ran after the people with knife, the public became helter skelter and the routine life of the people was disturbed. The detaining authority has recorded that the petitioner had been publicly beating innocent people and 4 witnesses have supported this allegation against the petitioner. Having made an inquiry into these allegations against the petitioner and the fear which had been expressed by the witnesses with regard to the security of their person and property in case their identity is disclosed to the petitioner, the detaining authority invoked the provisions of S.9(2) of the Act claiming privilege to withhold the identity of these witnesses and looking to the seriousness of the matter the proceedings for his externment will not be a proper remedy and it was necessary to detain the petitioner and accordingly the detention order was passed.

3. This Special Civil Application was filed on 9-7-96 and on 12-7-96 Rule returnable for 19-8-96 was issued but so far no return has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

4. I have considered the submissions made on behalf of both the sides. Only yesterday i.e. on 4-10-96 I have passed an elaborate order with detailed reasons and after taking into consideration the ratio of the various decisions rendered by the Supreme Court and this Court a view has been taken that the allegations of this nature do not constitute a case of breach of public order. For the reasons stated in the detailed order dated 4-10-96 passed in Special Civil Application No.3879/96, which is based on number of decisions rendered on the point and comparing the nature of allegations which were considered by the Supreme Court and this Court and comparing the same with the allegations in the present case, I am fully satisfied that such allegations do not constitute a case of breach of public order nor they could be made the ground for passing the impugned detention order. Such grounds have been held to be not at all germane to the considerations necessary for breach of public order and I find that the detention order has been passed for a collateral purpose of law and order instead of public order and the detention order passed on the grounds, as aforesaid, can not be sustained in the eye of law. The submission made on behalf of the petitioner is fully covered by the decision rendered on 4-10-96 by this Court, as stated above and the impugned detention order deserves to be quashed and set aside.

5. Accordingly this Special civil Application is allowed. The petitioner's continued detention is declared to be illegal and the detention order dated 15-4-96 passed by Police Commissioner, Ahmedabad City is hereby quashed and set aside. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.